

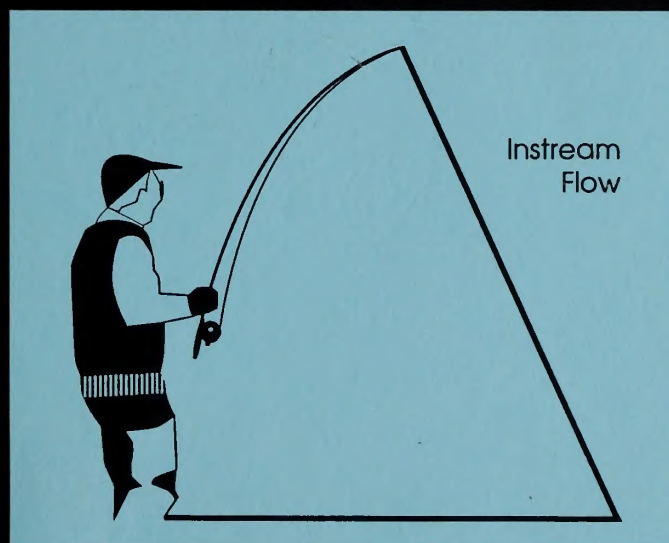
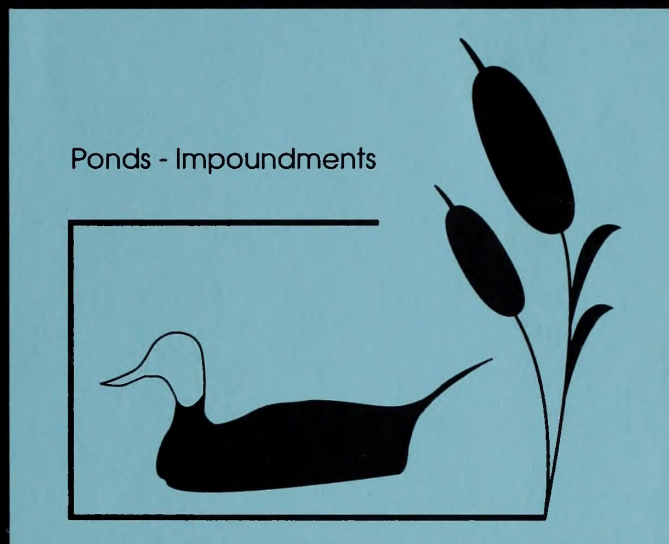
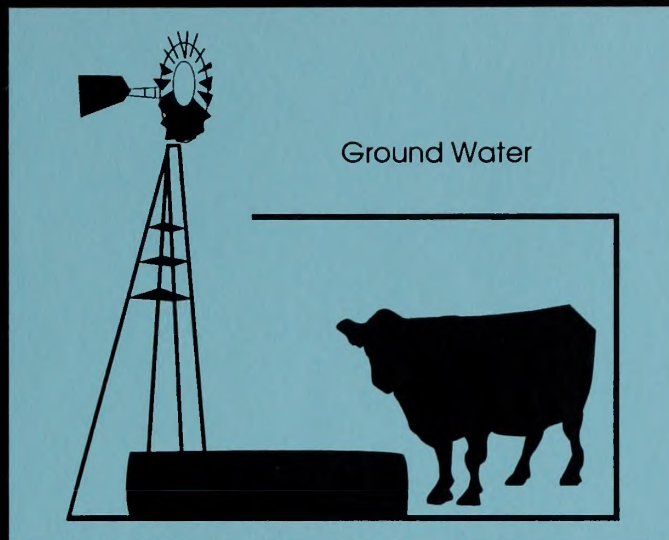
BLM Water



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Availability Strategy

March 1993



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INTRODUCTION

In April 1991 the Assistant Director, Land and Renewable Resources, convened a group in Washington to discuss the water availability issues and water rights workloads facing the Bureau. The meeting led to a work plan, approved by the Assistant Director in June 1991, to review water availability direction, practices, and workloads Bureauwide.

The overall objective was to ensure that BLM has a consistent, comprehensive water availability strategy, including the identification of funding and other barriers that might prevent implementing such a strategy. The focus was a review of water rights required to support public land resource management in the context of changing western water law and practice. Specific objectives included the following:

1. Develop a consistent, comprehensive water availability strategy for BLM.
2. Ensure that the strategy is driven by, and based upon, resource management needs.
3. Relate the strategy to organization, funding, and program priorities to (1) ensure reflection in BLM's budget development process, (2) ensure appropriate staffing and organizational placement of responsibilities, and (3) allow interim decisions where possible.
4. Assure that water needs on non-BLM land are understood and considered when implementing this strategy.
5. Provide an outreach document to promote discussion and greater understanding of BLM goals, policies, and specific positions for water resources.
6. Lay the groundwork for activities and direction aimed at greater internal understanding and consistency when addressing water availability issues.
7. Ensure that BLM's overall strategy reflects emerging water management techniques and changing environmental and water use considerations.

In September 1991 a national Water Rights and Availability Workshop was held in Denver. Participants included key water resource specialists, program leaders, and managers from around the Bureau. The workshop resulted in a series of recommendations to BLM management and an agreement that field offices compile key water rights data to refine the recommendations.

The following goals and strategies represent the culmination of this effort. This Water Availability Strategy is intended to guide a number of action items throughout FY 1993 and beyond. BLM must take this comprehensive approach to water resources, and water rights in particular, to accomplish its resource management missions in the future. It goes without saying that this is integral to such initiatives as Range of Our Vision, Recreation 2000 and Wildlife 2000, the Riparian-Wetland Initiative for the 1990s, and others.

Implementation of BLM's Water Availability Strategy will remain a high priority for the foreseeable future. BLM will immediately begin to address the specific goals and strategies. The Bureau will work closely with other federal agencies, the states, and organizations such as the Western Governors' Association to ensure proper coordination throughout the process.

GOALS AND STRATEGIES

GOAL I: WATER RIGHTS DIRECTION

Clarify or expand BLM water rights direction to achieve a comprehensive framework for addressing water rights issues and securing the availability of water for resource management purposes, while reflecting consideration for other local and regional water needs. This includes documenting, refining, and providing direction on the use of all available and appropriate techniques for securing, ensuring, or protecting water rights necessary for public purposes.

STRATEGY 1

Issue an Instruction Memorandum followed by appropriate manual revisions to accomplish the following:

1. Encourage vigorous adjudication and protection of existing water rights.
2. Ensure that Supplemental Program Guidance and other BLM manual sections address water availability and water rights needs.
3. Clarify the purposes for which BLM seeks instream flow protection or other water rights.
4. Reinforce and clarify the overall policy of seeking needed water rights.
5. Require that BLM review and evaluate other water rights filings for impacts on BLM resources and object/protest as appropriate.
6. Provide a clear policy statement and direction regarding the application of FLPMA permit authorities as related to private water developments requiring the use of public land.

7. Reinforce the current policy that water rights are to be considered in all land exchanges and transfers.
8. Clarify the legal requirement to assert federal water rights, including reserved rights, in general adjudications.
9. Ensure that groundwater issues receive greater attention and direction.

STRATEGY 2

Ensure that each BLM State Office develops a manual supplement to relate overall Bureau direction to individual state laws and procedures within its jurisdiction.

STRATEGY 3

Develop a handbook that covers available techniques and methodologies for securing, ensuring, or protecting water rights.

1. Outline alternatives in addition to acquiring new water rights for meeting BLM needs, including innovative approaches to water management that have proved successful within the context of existing state law(s).
2. Reinforce the use of BLM H-1740-1 project checklist to ensure that water rights are covered.
3. Review procedures to enforce policy(s) on water development authorization and trespass.
4. Include approaches for reconciliation of conflicts involving instream flow, riparian areas, wetlands, and in-situ wildlife and recreation use, where there is a discrepancy between some state laws and Federal resource management mandates.

GOAL II: WORKLOAD AND FUNDING

Establish a comprehensive understanding of BLM workloads in the water rights area and identify a strategy, funding needs, and priorities for addressing this workload.

STRATEGY 1

Establish priorities within each state for streams needing instream flow protection based upon agreed-upon national criteria, and propose the funding needed to meet these priorities on a multi-year basis.

STRATEGY 2

Set as top priority pursuing BLM water needs where there is a risk of precluding management options through inaction, with special emphasis on wetlands and waterfowl habitat, riparian areas, watershed and water quality, wilderness values, grazing management, and in-situ wildlife and recreation needs.

STRATEGY 3

Establish a Bureau workload/funding strategy for dealing with ongoing and planned general adjudications.

STRATEGY 4

Ensure adequate funding to evaluate existing and proposed private water rights, both on and off public land, to assess implications for BLM resource management needs.

GOAL III: INVENTORY AND PLANNING

Ensure that BLM inventory and planning processes effectively address water rights and other water availability considerations.

STRATEGY 1

Incorporate water availability, needs, and conflicts into BLM planning, including relationships to non-BLM uses and regional water issues.

1. Evaluate RMPs to determine their adequacy in the area of water resources and water rights. Develop updated guidelines following the evaluation.
2. Promote the importance of an adequate physical and legal source inventory as a basis for all future activities involving water resources and water rights.

STRATEGY 2

Improve documentation of water rights data to ensure both responsiveness to filing and adjudication needs and utility in Bureau program and planning activities.

1. Maintain and improve existing BLM state systems as the principal data base(s) for water rights information.
2. Evaluate existing systems to (1) improve technology transfer from state to state, (2) help ensure compatibility with modernization/GIS efforts, and (3) determine any need for a BLM corporate data base.
3. Stress the importance of data base coordination with state water rights agencies, including the potential for electronic data transfer.

GOAL IV: INTERGOVERNMENTAL COORDINATION

Improve intergovernmental coordination and cooperation (1) in water rights and water resource management generally, with special emphasis on involvement with state water law agencies, and procedures, and (2) through efforts to understand and relate to water considerations beyond the traditional scope of BLM activities.

STRATEGY 1

Take specific steps to improve water rights/water resource coordination with state governments and other federal agencies.

1. Develop a position paper/guidance for consistency in dealing with state governments, especially state legislative proposals affecting water rights, emphasizing instream flow, definition of beneficial use, and filing procedures.
2. Review/revise existing MOUs, or initiate agreements, to resolve water issues/conflicts or to identify mutual interests and responsibilities.
3. Pursue coordinated planning with other federal and state agencies as a means of improving joint or parallel water resource activities and resolving conflicts.
4. Review BLM water rights policies for consistency with those of the Forest Service and other Interior Department agencies.

STRATEGY 2

Conduct public outreach on water rights/quality activities and policies to achieve greater awareness, including a public outreach document.

STRATEGY 3

Develop a BLM strategy for reacting to FERC licensing, with emphasis on current relicensing.

GOAL V: ORGANIZATION AND STAFFING

Clarify and focus water rights and water resource management responsibilities throughout the organization, and provide the staffing needed to effectively address water rights workloads over the next 5-10 years.

STRATEGY 1

Direct each state office to ensure that it has in its table of organization a senior water resources staff person and a second position devoted primarily to paralegal/technical/data management activities related to water rights.

1. Develop generic position descriptions for a BLM water resource expert and a water rights specialist position at the state level .
2. Ensure that the state water resource specialist, in addition to other duties, provides leadership and coordination for water rights activities, including oversight of technician-level support.

STRATEGY 2

Ensure that each BLM district office has at least one hydrologist assigned to it, preferably full-time, to deal with all aspects of water resources, including water rights.

1. Develop a specific recruitment and retention plan for hydrologists in the Bureau, with emphasis on entry/district-level positions.
2. Take steps to ensure that technician-level support to the district hydrologist is available from existing district staff, with special emphasis on water rights training.

STRATEGY 3

Promote the establishment of a federal Water Resources Coordination Group at the state level to improve communication and coordination with the Solicitor's Office, with the Department of Justice (where appropriate), and among federal agencies.

1. Review staffing needs cooperatively with SOL/DOJ and support adequate staffing for legal water rights work.

STRATEGY 4

Building upon existing Service Center expertise, formally recognize a technical water resources group to assist with the instream flow studies and technology transfer needed to support ongoing programs in each state.

1. Include with the instream flow group a national water rights position to deal with policy issues and to provide technical assistance to field offices in special situations.
2. Use the Service Center technology transfer process as a starting point for this recommendation, with final placement contingent upon other organizational decisions related to Washington Office rightsizing.

GOAL VI: TECHNOLOGY TRANSFER

Improve and, where appropriate, standardize BLM methodologies for identifying and quantifying water requirements for BLM resource management activities/objectives, and expand the understanding and application of these Bureauwide.

STRATEGY 1

Expand water rights and water quality training for BLM personnel, focusing on managers, program leaders, and water resource specialists.

STRATEGY 2

Expand BLM's ability to apply water resource technology by using external expertise, with special emphasis on university personnel.

STRATEGY 3

Develop an overall technology transfer strategy in areas related to water resources.

1. Develop water resource assessment guidance for WSAs and Congressional reports.
2. Develop a technology transfer strategy dealing with surface-groundwater interrelationships.
3. Develop/revise consumptive use models or formulas for animals (livestock, wild horses, wildlife) .
4. Develop a technology transfer strategy to quantify all non-consumptive beneficial uses.

ISSUES AND PROBLEM AREAS FOR FURTHER STUDY

While developing the overall strategy, BLM's state organizations identified numerous issues and problems. These issues and problems could not be thoroughly analyzed and require further study before specific recommendations can be made. With the implementation of this Strategic Plan, the Bureau will continue to investigate and address as appropriate the following situations:

1. Private water-right holders attempting to sell or transfer water off public land in conflict with resource management needs.
2. Situations where private water rights, often in excessive amounts, severely limit the ability to acquire water critical for resource management, especially with regard to instream flow and riparian areas.
3. Damage to riparian areas from the transfer of water off site.
4. Damage resulting from the failure of livestock operators to adequately maintain water projects developed under Section 4.
5. Difficulty in changing water uses for multiple use management where all or part of the water right is privately held.
6. Long-term damage from unregulated pumping of groundwater.
7. Situations related to trespass and unauthorized use of water.
8. Instances where over-appropriated basins preclude proper resource management.
9. Recurring threats posed by major water developments off public lands, especially with regard to upstream diversions and groundwater use.
10. Special funding and workload impacts in those states that require a certified engineering survey to accompany each water right filing.
11. Lack of clarity and consistency with regard to funding water rights activities in 4340 versus other subactivities.
12. Lack of consistent practice regarding the assertion of PWR 107 reserved rights in a general (McCarran Act) adjudication where a prior state right has not been established.

APPENDIX A - SITUATIONAL WORKLOAD DATA

In developing this strategy, all BLM state organizations provided the project team with workload data. The following discussion, a compilation and analysis of field data, is intended to be a general summary of field office needs and to provide some relative values among states. There was only a moderate effort made, however, to work with individual state program leaders to ensure complete accuracy in values presented.

- *WATER RIGHT FILINGS*

Since the late 1970s, BLM has emphasized both applying for water use permits through state appropriative procedures and claiming water rights through general adjudications. During this same period, inventorying known water sources on public lands has also been a high priority. Table 1 and Figure 1 show total numbers of existing and remaining BLM water-right filings. Although this data shows over half of BLM's sources filed on, significant workloads will continue for existing sources. BLM has traditionally justified budgeted dollars by reporting water rights claimed, and it is these "reported" sources that are listed as existing.

- *TYPES OF WATER RIGHTS*

BLM generally deals with two types of water rights: (1) state appropriative and (2) federal reserved. Table 1 presents water-right summaries under each of these categories. Overall, BLM is approximately 58 percent complete in filing for state appropriative rights and 53 percent complete in claiming federal-reserved rights. There is a notable variance in numbers of federal-reserved rights by state (see Figure 1); this may be attributed to different appropriative procedures between the states.

- *FUTURE WORKLOAD*

The total remaining filings for both types of water rights equals 47,000 sources. A significant portion of the existing sources may require additional data, review for objections, or other work, such as legal actions.

- *INSTREAM FLOW*

This workload is summarized in Table 2. Out of the 529 streams that need some level of instream-flow quantification and protection, slightly over half of these could be completed by the end of 1997. Although workload costs may appear to be high, BLM needs to look carefully at cooperative opportunities to complete this work and to establish national criteria for selecting key streams and rivers for more costly

assessments (perhaps 50 streams and rivers would qualify). Additionally, more training and use of in-house expertise to conduct assessments could reduce additional funds needed for this effort. Regardless of the measures taken, however, instream flow efforts are clearly underfunded.

- *WORKLOAD SUMMARY*

The projected workload for FY 1993-97 is summarized in Table 3. As a rough estimate, the ongoing workload addresses 30 percent of those existing sources reported in Table 1. During the 5-year period, approximately 17,500 sources out of 35,000 remaining could be filed on through state appropriate procedures. BLM could perfect 12,000 remaining federal-reserved rights and file on 1,500 new ground-water sources under state authorities. These accomplishments would not be completed under current funding levels.

- *SPECIAL WORKLOAD REQUIREMENTS*

Certain state requirements and schedules related to numerous general adjudications add to the complexity and timing of BLM's workload commitments. The following are some examples of special situations:

- In a massive effort to adjudicate Snake River water rights in Idaho, BLM must review litigation reports, file objections, fund filing fees, and prepare water right submissions. Numbers reported for Idaho in Table 1 reflect an unusually high Snake River litigation workload.
- Under the Montana Statewide adjudication, the court decided that claims for wildlife purposes require diversions, thus precluding BLM's claims on 4,000 undeveloped springs and potholes. This order requires BLM to develop and implement new legal strategies in order to manage these sources of water.
- The State of Oregon requires that a State official certify each water right application. Because of this State rule, BLM's expenses to secure water rights are substantially increased. Additionally, the State requires BLM to annually certify use on 6,000 existing water rights.

- *OTHER SITUATIONAL DATA*

Table 4 identifies (1) RMPs that inadequately address water rights and instream-flow issues, (2) Federal Energy Regulatory Commission (FERC) cases pending hydropower licenses or relicensing, and (3) current interagency agreements that specifically address water use and availability concerns. Future workloads may include RMP amendments, water power strategic planning, and additional interagency agreements. It is also estimated that FERC cases may be substantially higher than the reported value of 26. Tables 5 and 6 identify workloads associated with inventory, information management, and monitoring.

**Table 1. Existing and Remaining Water Rights Filings
March 1992
(Sources)**

States	State Appropriate		Federal Reserved	
	Existing	Remaining	Existing	Remaining
Alaska	26	1	0	0
Arizona	1,915	3,900	1,275	880
Colorado	4,000	3,000	2,000	0
California	1,676	1,050	120	2,600
Idaho	9,136 ¹	600	13,704 ^{1,4}	900
Montana	12,000	9,000	4,000	4,032
Nevada	316	6,480	10,300 ⁴	800
New Mexico	14 ²	50	800	50
Oregon	3,437	1,800	3,100	2,480
Utah	10,595	2,000	500	500
Wyoming	2,615	1,070	600	600
Totals	47,730 ³	28,951	36,399	12,842

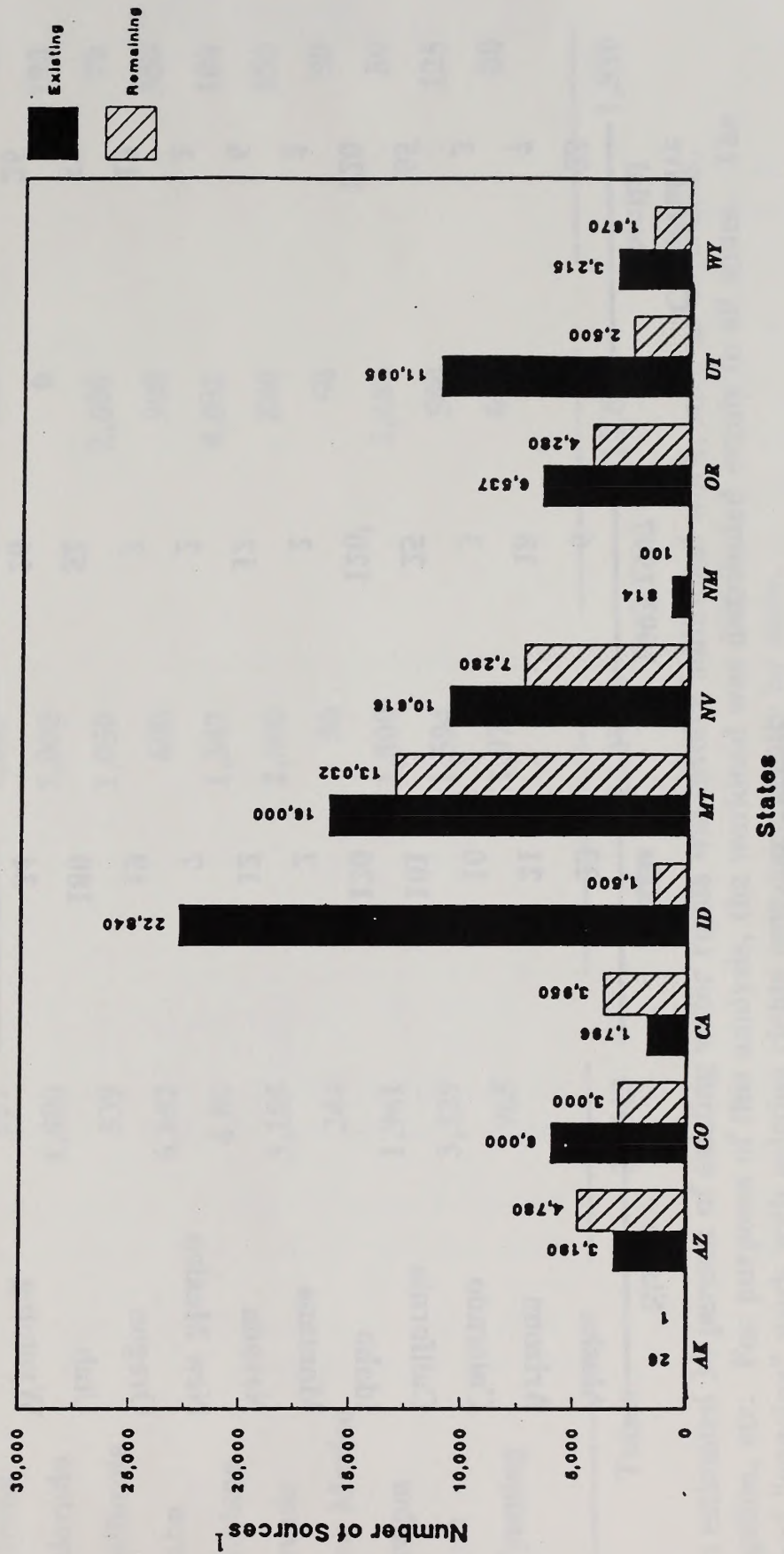
¹High number of claims under Snake River Adjudication.

²Low number of filings because there are no state requirements to file on impoundments less than 10 acre-feet.

³Total existing includes both perfected rights and claims or applications with future actions pending.

⁴High number of Public Water Reserve sources.

**Figure 1. Total Existing vs. Remaining Water Right Filings
March 1992**



¹State appropriate and Federal reserved are included in totals.

**Table 2. Instream Flow Workload and Opportunities
March 1992
(Streams)**

States	Totals	1993-1997	Cooperative Potential
Alaska	23	6	23
Arizona	21	18	7
Colorado	10	3	3
California	101	25	65
Idaho	120	120 ¹	120
Montana	2	2	2
Nevada	12	12	6
New Mexico	7	2	2
Oregon	19	3	19
Utah	180	52	52
Wyoming	34	26	26
Totals	529	269	325

¹Includes Snake River Adjudication claims for instream livestock and wildlife watering.

Table 3. Water Right Filings and Claims Workload for 1993-1997
March 1992
(Sources)

States	Ongoing	State Appropriative	Federal Reserved	Ground Water
Alaska	8	1	0	0
Arizona	957	1,665	880	25
Colorado	1,800	1,000	0	100
California	539	1,050	2,600	70
Idaho	6,852	600	900	300
Montana	4,80	1,347	4,032	100
Nevada	3,185	2,000	800	650
New Mexico	244	50	50	50
Oregon	1,961	1,800	2,480	80
Utah	3,329	1,594	500	125
Wyoming	965	1,070	600	80
Totals	24,640	12,177	12,842	1,580

¹An estimated 30 percent of existing water rights will involve additional work, such as objections, litigation, etc. For purposes of this analysis, the workload was distributed evenly to all states. The actual "ongoing" work with existing rights may vary greatly by state.

**Table 4. Other Situational Data
March 1992**

<u>States</u>	<u>RMPs</u>	<u>FERC Cases</u>	<u>Agreements</u>
Alaska	3	8	0
Arizona	5	0	2
California	17	4	0
Colorado	10	3	0
Idaho	7	*	0
Montana	4	9	3
Nevada	10	0	0
New Mexico	7	0	0
Oregon	5	5	0
Utah	7	0	3
Wyoming	2	0	1
Totals	77	29	9

LEGEND

RMPs: Existing RMPs that lack adequate direction for water rights direction and instream flow protection.

FERC Cases: Federal Energy Regulatory Commission (FERC) cases pending licenses or relicensing before 1999.

Agreements: MOUs and/or cooperative agreements that address water use and water rights.

*No estimate received.

**Table 5. Inventory Projections
March 1992
(Sources)**

States	Total Planning	Planned 5-Year	Federal Reserve Quantification	Ground Water
Alaska	0	0	0	0
Arizona	2,057	1,454	230	147
Colorado	2,000	1,000	0	100
California	520	1,600	1,450	10
Idaho	5,880	100	0	0
Montana	9,000	1,347	4,000	50
Nevada	5,000	250	80	50
New Mexico	800	800	10	10
Oregon	500	500	1,000	0
Utah	1,345	1,345	500	125
Wyoming	1,500	855	570	60
Total	28,602	9,256	7,840	552

Table 6. Data Management and Monitoring Projections
March 1992
(Sources)

States	Automated System Input	Non-Instream Flow Monitoring	Reaches for Instream Flow Monitoring
Alaska	0	0	20
Arizona	6,602	148	76
Colorado	1,105	0	5
California	5,135	1,530	15
Idaho	24,300	0	480
Montana	5,433	91	6
Nevada	1,332	70	1
New Mexico	1,041	30	1
Oregon	8,645	0	45
Utah	3,339	260	30
Wyoming	1,717	30	0
Total	58,649	2,159	679

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